

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

FRANCISCO X LOPEZ
Claimant

APPEAL NO. 08A-UI-00299-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST JANITORIAL SERVICE INC
Employer

**OC: 12/09/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Francisco Lopez filed an appeal from a representative's decision dated December 31, 2007, reference 01, which denied benefits based upon his separation from Midwest Janitorial Service, Inc. After due notice was issued, a hearing was held by telephone on January 24, 2008. Mr. Lopez participated personally. The employer participated by Kristy Hearn, operations manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 2005 until December 7, 2007, when he was discharged from employment. Mr. Lopez worked as a full-time supervisor and was paid by salary. His immediate supervisor was Kristy Hearn.

Mr. Lopez was unable to complete all supervisory/janitorial service on the night of December 6, 2007, due to inclement weather conditions that prevented him from traveling to Iowa City to complete some of his duties. The claimant had called building owners at that location and had secured permission to perform the janitorial services the next day. Employees under Mr. Lopez's supervision had been unable to report to various building cleaning locations due to bad driving and weather conditions. When Mr. Lopez contacted his supervisor, Ms. Hearn, by telephone to report driving problems that evening, Ms. Hearn urged the claimant to report to the Iowa City locations to perform his supervisory responsibilities. The claimant repeatedly stated that he would be unable to do so due to the especially poor driving conditions. When the parties had reached an impasse in the conversation, Mr. Lopez believed that the conversation had ended and disconnected. In turn, Ms. Hearn believed that the claimant had "hung up on her." When the claimant reported to the company offices the following day, he was instructed to turn in his keys by Ms. Hearn.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant was discharged by the employer and did not intentionally choose to leave his employment. Mr. Lopez was discharged based upon a number of factors. Ms. Hearn mistakenly believed that the claimant had hung up on her during a previous conversation on December 6, 2007. The evidence in the record establishes that Mr. Lopez's intention was not to hang up on his supervisor. The claimant believed that the conversation had ended and therefore disconnected after a period of long silence by both parties. Ms. Hearn also believed that Mr. Lopez should have traveled to Iowa City, Iowa, from his last assignments in Muscatine, Iowa. The evidence in the record establishes that the driving conditions were especially bad that evening and that other employees had been unable to report for similar reasons. The evidence in the record establishes that Mr. Lopez had acted reasonably by contacting building owners in Iowa City and by securing permission to perform the janitorial services the following day, December 7, 2007.

While the employer's decision to terminate Mr. Lopez may have been sound from a management viewpoint, the evidence in the record does not establish intentional disqualifying misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged from employment under non-disqualifying conditions. Benefits are allowed, provided Mr. Lopez meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated December 31, 2007, reference 01, is hereby reversed. The claimant was discharged under non-disqualifying conditions. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw